

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>JOSEPH F. HUTCHISON, et al.</b>	)	Case No. 1:01-789
	)	
<b>Plaintiffs,</b>	)	(Judge Beckwith)
	)	
-v-	)	(Magistrate Judge Hogan)
	)	
<b>FIFTH THIRD BANCORP,</b>	)	<b>DECLARATION OF</b>
	)	<b>PATRICK F. FISCHER IN</b>
<b>Defendant.</b>	)	<b>SUPPORT OF DEFENDANT'S</b>
	)	<b>SECOND MOTION TO RENEW</b>
	)	<b><u>MOTION FOR ATTORNEY'S FEES</u></b>

I, Patrick F. Fischer, being first cautioned and duly sworn, declare and testify as follows:

1. I am a partner in the law firm of Keating, Muething & Klekamp PLL, One East Fourth Street, Suite 1400, Cincinnati, Ohio 45202. I submit this Declaration in support of Defendant, Fifth Third Bancorp's Second Motion to Renew Defendant's Motion for Award of Attorney's Fees.

2. I have acted as lead counsel for Fifth Third in handling the above-captioned litigation.

3. After the Supreme Court denied Plaintiffs' petition for writ of certiorari, Fifth Third approached Plaintiffs and expressed its intent to renew its motion for attorneys' fees under the ERISA statute. In order to avoid further litigation, Fifth Third offered to enter into settlement negotiations concerning the fees and costs. Plaintiffs rebuffed that idea and refused to consider settlement.

4. Fifth Third has incurred attorney fees in the total amount of \$304,235.68 since the inception of this litigation. A chart showing the breakdown of the total fees incurred is attached

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as Exhibit A. Should this Court need further detail on the fees incurred, Fifth Third will provide redacted copies of the monthly invoices sent to, and paid by, Fifth Third.

5. Since December 14, 2006, Fifth Third has incurred additional fees in the amount of \$38,909.59 in defending this litigation, which included the drafting of a brief in opposition to Plaintiff's Petition for Writ of Certiorari to the United States Supreme Court. A chart showing the breakdown of the fees incurred since December 2006 is attached to this affidavit as Exhibit B.

6. The rates charged by Keating Muething & Klekamp to Fifth Third are the customary, necessary, and usual rates for the attorneys who worked on this case and are normal rates for attorneys practicing in the Cincinnati area.

7. The amount of fees sought by this motion is a total of the fees actually paid by Fifth Third to Keating Muething & Klekamp in defending this litigation. Due to the timing of this motion, the bill for fees for the month of June, 2007 has not yet been paid. After speaking with a representative of Fifth Third, I understand that this bill will be paid in full.

8. Under the factors set forth in the Ohio Rules of Professional Conduct, Rule 1.5(a), these fees are reasonable, and were necessarily incurred, given the complexity of the issues and the protracted length of litigation.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on July 9, 2007.

s/ Patrick F. Fischer  
Patrick F. Fischer

# **ATTACHMENT A**

FIFTH THIRD BANCORP/SUBURBAN FEDERAL/  
HUTCHISON, JOSEPH

Fees Incurred from December 2002 through August 2006

INVOICE NO.	DATE OF INVOICE	ATTORNEY'S FEE	DATE OF PAYMENT
634437	01/16/2002	\$ 1,663.00	07/02/2002
638171	02/21/2002	\$ 8,343.40	07/02/2002
638839	03/19/2002	\$ 110.00	04/17/2002
641936	04/17/2002	\$ 250.00	05/08/2002
644982	05/14/2002	\$ 712.04	07/02/2002
650372	06/17/2002	\$ 471.25	07/15/2002
651291	07/15/2002	\$ 135.00	08/07/2002
654188	08/12/2002	\$ 135.00	08/30/2002
659293	09/12/2002	\$ 4,429.10	10/04/2002
660458	10/15/2002	\$ 1,229.25	11/06/2002
665295	11/19/2002	\$ 6,378.75	12/11/2002
667911	12/19/2002	\$ 2,872.50	02/10/2003
668830	01/16/2003	\$ 6,672.50	07/08/2003
671809	02/17/2003	\$ 142.50	07/08/2003
677853	04/15/2003	\$ 4,106.25	07/08/2003
680963	05/13/2003	\$ 913.75	07/08/2003
683814	06/25/2003	\$ 4,564.00	07/08/2003
686899	07/15/2003	\$ 1,545.75	08/13/2003
689879	08/14/2003	\$ 12,134.70	09/03/2003
692909	09/16/2003	\$ 320.00	10/08/2003
696935	10/15/2003	\$ 5,486.88	11/18/2003
699909	11/17/2003	\$ 4,856.25	12/17/2003
702726	12/29/2003	\$ 192.00	01/26/2004
708363	02/25/2004	\$ 185.25	03/17/2004
714606	04/19/2004	\$ 57.00	05/26/2004
717655	05/19/2004	\$ 0.00	06/23/2004
723920	07/19/2004	\$ 114.00	08/06/2004
728774	08/11/2004	\$ 76.95	09/16/2004
731784	09/16/2004	\$ 2,090.50	10/14/2004
734964	10/18/2004	\$ 8,878.70	11/24/2004
737850	11/24/2004	\$ 8,327.70	12/27/2004
740815	12/21/2004	\$ 4,170.03	02/09/2005
743774	01/21/2005	\$ 1,356.13	03/01/2005
746745	02/14/2005	\$ 932.55	03/22/2005
752196	03/16/2005	\$ 2,431.53	03/29/2005
753236	04/11/2005	\$ 1,399.83	05/17/2005
758720	05/23/2005	\$ 1,711.90	07/30/2005
763786	06/13/2005	\$ 2,478.90	07/19/2005
764853	07/11/2005	\$ 32,591.65	07/28/2005
768179	08/18/2005	\$ 38,431.30	09/22/2005
771310	09/13/2005	\$ 13,633.45	09/27/2005
<b>TOTAL</b>		<b>\$186,531.24</b>	

## Fees Incurred From September 2006 through November 2006

INVOICE NO.	DATE OF INVOICE	ATTORNEY'S FEE	DATE OF PAYMENT
775561	10/24/2005	\$6,963.00	11/17/2005
778448	11/23/2005	\$19,996.08	12/15/2006
783884	12/27/2005	\$7,636.10	01/24/2006
784564	01/23/2006	\$1,676.75	02/09/2006
790058	02/09/2006	\$3,214.33	02/22/2006
791150	03/14/2006	\$21,212.08	03/30/2006
794291	04/10/2006	\$3,633.75	04/20/2006
797906	05/15/2006	\$2,173.13	05/23/2006
804482	07/13/2006	\$83.13	08/03/2006
807962	08/14/2006	\$32.30	08/22/2006
815240	10/12/2006	\$13,158.45	10/24/2006
820874	12/14/2006	\$612.75	
<b>SUBTOTAL</b>		<b>\$80,391.85</b>	
<b>CREDIT</b> Invoice 811553		<b>-\$1,664.00</b>	
<b>TOTAL</b>		<b>\$78,727.85</b>	

## Fees Incurred Since December 2006

INVOICE NO.	DATE OF INVOICE	ATTORNEY'S FEE	DATE OF PAYMENT
824082	01/22/2007	\$3,261.65	02/01/2007
827221	02/19/2007	\$1,110.55	03/06/2007
830276	03/23/2007	\$50.35	05/01/2007
833287	04/16/2007	\$102.60	05/01/2007
836470	05/15/2007	\$17,611.57	05/30/2007
839728	06/13/2007	\$16,855.37	
<b>TOTAL</b>		<b>\$38,976.59</b>	

	12/2002 – 08/2006	<b>\$186,531.24</b>	
	09/2006 – 12/2006	<b>\$78,727.85</b>	
	12/2006 – Present	<b>\$38,976.59</b>	
<b>GRAND TOTAL</b>		<b>\$304,235.68</b>	

## **ATTACHMENT B**

FIFTH THIRD BANCORP/SUBURBAN FEDERAL/  
HUTCHISON, JOSEPH

Fees Incurred Since December 14, 2006

INVOICE NO.	DATE OF INVOICE	ATTORNEY'S FEE	DATE OF PAYMENT
824082	01/22/2007	\$3,261.65	02/01/2007
827221	02/19/2007	\$1,110.55	03/06/2007
830276	03/23/2007	\$50.35	05/01/2007
833287	04/16/2007	\$102.60	05/01/2007
836470	05/15/2007	\$17,611.57	05/30/2007
839728	06/13/2007	\$16,855.37	
<b>TOTAL</b>		<b>\$38,976.59</b>	

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